

Office-Supreme Court, U.S.  
FILED

OCT 18 1962

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

No. 104.

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY COM-  
MISSIONERS OF THE STATE OF NEW JERSEY,

Appellants,

v.s.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,  
UNITED STATES OF AMERICA and INTERSTATE COMMERCE  
COMMISSION,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY.

## STATEMENT OPPOSING MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*.

Appellee, New York, Susquehanna and Western Rail-  
road Company, respectfully requests that the motion of  
Railway Labor Executives' Association, for leave to file  
a brief *amicus curiae* on the merits, should be denied for  
the following reasons:

1. The motion fails to indicate what facts or questions  
of law are claimed not to have been, or reasons for believ-  
ing will not adequately be, presented by the parties.

2. The motion fails to disclose the relevancy of any such fact or question of law to the disposition of the case.

3. The applicant Association's interest is such that its special view can contribute nothing to the determination of the question before the Court; if there should be a discontinuance of the three trains involved, as is compellingly indicated by the unending losses in the passenger operation, and the losses, in every year since 1957, in the freight operations as well, it will be quite insignificant to the Association whether the discontinuance is under the procedure of 49 U. S. C. 13a(1) or 13a(2).

4. The proposed brief, which the Association offers if the motion be granted, is superficial, inadequate and will tend to clutter and confuse rather than clarify and aid the discussion. It wholly ignores the admitted fact that the buses are operated under contract with the rail carrier and are to be regulated as railroad transportation under 49 U. S. C. section 302(c), and contains no discussion whatever of the opinion of the majority below.

5. If the present appeal should result in an affirmance of the decision below, that the discontinuance of the passenger trains is governed by 49 U. S. C. 13a(1), such result will not deprive said Association, or any other person having an interest from an opportunity to be heard by the Interstate Commerce Commission on the question whether the Commission should order the operation continued (or, if previously discontinued, restored) for a period not exceeding one year from the date of such order.

6. This appellee is informed that the Interstate Commerce Commission did not "consent" to the proposed brief

*amicus curiae*, but merely stated that it had no objection thereto, and that the consent of Appellants was not requested and obtained.

For which reasons, this appellee declined to consent to the filing of the proposed brief *amicus curiae*, and believes the present motion should be denied.

Dated: October 17, 1962.

Respectfully submitted,

VINCENT P. BIUNNO,  
Attorney for New York, Susquehanna  
and Western Railroad Company,  
605 Broad Street,  
Newark 2, N.J.

LOU. BIUNNO & TOMPKINS,  
Of Counsel.